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**TO:**

**Name:** Mail Stop AMENDMENT  
Group Art Unit 3772/Examiner Michael Brown

**Firm:** U.S. Patent & Trademark Office

**Fax No.:** 571-273-8300

**Subject:** U.S. Patent Application No. 09/605,001

Gary Karlin Michelson

Filed: June 27, 2000

APPARATUS AND METHOD OF INSERTING  
SPINAL IMPLANTS

Attorney Docket No. 101.0044-04000

Customer No. 22882

Confirmation No.: 5171

**FROM:**

**Name:** Thomas H. Martin, Esq.

**Phone No.:** 330-877-2277

**No. of Pages (including this):** 16


**Date:** January 5, 2009

**Confirmation Copy to Follow:** NO

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**Message:****CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8**

I hereby certify that the attached Transmittal Form (in duplicate) and Reply to Office Communication of December 23, 2008 with Claim Chart Under 37 C.F.R. § 41.202(a)(3) are being facsimile transmitted to the U.S. Patent and Trademark Office on January 5, 2009.

  
Sandra L. Blackmon

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FORM PTO-1083

Attorney Docket No.: 101.0044-04000  
Customer No. 22882

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re application of:  
Gary Karlin Michelson  
Serial No.: 09/605,001  
Filed: June 27, 2000  
For: APPARATUS AND METHOD OF  
INSERTING SPINAL IMPLANTS

Confirmation No.: 5171

Group Art Unit: 3772  
Examiner: Michael A. Brown

Mail Stop AMENDMENT  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Transmitted herewith is a Reply to the Office Communication dated December 23, 2008 in the above-identified application.

- ☒ No additional fee is required.
- ☐ Applicant hereby requests a \*\*\*-month extension of time to respond to the above office action.
- ☐ The total amount of \$\*\*\*.00 to cover the above fees is to be charged to Deposit Account No. 50-3726.
- ☒ The Commissioner is hereby authorized to charge any deficiencies of fees associated with this communication or credit any overpayment to Deposit Account No. 50-3726. **A copy of this sheet is enclosed.**
- ☒ Any filing fees under 37 C.F.R. § 1.16 for the presentation of extra claims
- ☒ Any patent application processing fees under 37 C.F.R. § 1.17

Respectfully submitted,  
MARTIN & FERRARO, LLP

Date: January 5, 2009

By:   
Thomas H. Martin  
Registration No. 34,383

1557 Lake O'Pines Street, NE  
Hartville, Ohio 44632  
Telephone: 330-877-0700  
Facsimile: 330-877-2030

Transmittal of Reply to OA.DOC

FORM PTO-1083

Attorney Docket No.: 101.0044-04000  
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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:  
Gary Karlin Michelson  
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Transmittal of Reply to OA.DOC

**RECEIVED  
CENTRAL FAX CENTER****JAN 05 2009**PATENT  
Attorney Docket No. 101.0044-04000  
Customer No. 22882

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	Confirmation No.: 5171
Gary Karlin Michelson	)	
Serial No.: 09/605,001	)	Group Art Unit: 3772
Filed: June 27, 2000	)	Examiner: Michael A. Brown
For: APPARATUS AND METHOD OF	)	
INSERTING SPINAL IMPLANTS	)	

Mail Stop AMENDMENT  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**REPLY TO OFFICE COMMUNICATION OF DECEMBER 23, 2008**

In reply to the Office Communication of December 23, 2008, Applicant submits herewith a Claim Chart Under 37 C.F.R. § 41.202(a)(3). Note that Applicant is requesting an Interference between U.S. Patent No. 6,083,225 and the present application. Applicant originally requested an Interference between U.S. Patent No. 6,083,225 and the present application in a Reply dated July 3, 2001.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-3726.

Respectfully submitted,  
MARTIN & FERRARO, LLP

Dated: January 5, 2009By:   
Thomas H. Martin  
Registration No. 34,383

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PATENT  
Attorney Docket No. 101.0044-04000  
Customer No. 22882

**CLAIM CHART UNDER 37 C.F.R. § 41.202(a)(3)**

<b>Claim Count Number</b>	<b>Claims of Application No. 09/605,001</b>	<b>Claims of U.S. Patent No. 6,083,225</b>
1	105. A method for performing a surgical procedure, comprising the steps of: providing a surgical retractor including an elongate member defining a longitudinal axis, the elongate member including proximal and distal end portions and defining an opening therethrough to receive instrumentation, the distal end portion configured for insertion at least partially into an intervertebral space between adjacent opposed vertebrae and having two spaced apart retractor arms, each retractor arm including first and second supporting surfaces laterally displaced with respect to each other and to the longitudinal axis; distracting the adjacent vertebrae by at least partially inserting the retractor arms of the retractor within the intervertebral space whereby the first supporting surface of each retractor arm engages one vertebrae	1. A method for performing a surgical procedure, comprising the steps of: providing a surgical retractor including an elongate member defining a longitudinal axis, the elongate member including proximal and distal end portions and defining an opening therethrough to receive instrumentation, the distal end portion configured for insertion at least partially into an intervertebral space between adjacent opposed vertebrae and having two spaced apart retractor arms, each retractor arm including first and second supporting surfaces laterally displaced with respect to each other and to the longitudinal axis; distracting the adjacent vertebrae by at least partially inserting the retractor arms of the retractor within the intervertebral space whereby the first supporting surface of each retractor arm engages one vertebrae and the second supporting surface of

Claim Count Number	Claims of Application No. 09/605,001	Claims of U.S. Patent No. 6,083,225
	and the second supporting surface of each retractor arm engages the other vertebrae such that the adjacent opposed vertebrae are laterally displaced; and performing the surgical procedure.	each retractor arm engages the other vertebrae such that the adjacent opposed vertebrae are laterally displaced; and performing the surgical <del>spinal</del> procedure.
2	106. The method according to claim 105 wherein the step of performing includes introducing surgical instrumentation within the opening of the surgical retractor, the surgical instrumentation being utilized to perform the surgical procedure.	2. The method according to claim 1 wherein the step of performing includes introducing surgical instrumentation within the opening of the surgical retractor, the surgical instrumentation being utilized to perform the surgical procedure.
3	107. The method according to claim 106 wherein the step of performing the surgical procedure includes introducing a fusion implant through the opening in the surgical retractor and between the distracted vertebrae to effect fusion thereof.	3. The method according to claim 2 wherein the step of performing the surgical procedure includes introducing a fusion implant through the opening in the surgical retractor and between the distracted vertebrae to effect fusion thereof.
4	108. A method for fusing adjacent vertebral bodies, comprising the steps of: a) accessing the intervertebral disc space; b) providing a retractor including a retractor sleeve having proximal and distal end portions, the distal end portion having opposed retractor	5. A method for fusing adjacent vertebral bodies, comprising the steps of: a) accessing the intervertebral disc space; b) providing a retractor including a retractor sleeve having proximal and distal end portions, the distal end portion having opposed retractor

Claim Count Number	Claims of Application No. 09/605,001	Claims of U.S. Patent No. 6,083,225
	arms extending in a general longitudinal direction; c) positioning the retractor arms within the intervertebral disc space whereby first and second supporting surfaces of each arm contact opposed vertebral bodies; d) introducing a drill instrument into the sleeve and advancing the drill instrument within the sleeve to the disc space; e) forming with the drill instrument a bore that penetrates at least partially into each opposed vertebral body; f) removing the drill instrument from the sleeve; and g) introducing a fusion implant into the bore.	arms extending in a general longitudinal direction; c) positioning the retractor arms within the intervertebral disc space whereby first and second supporting surfaces of each arm contact opposed vertebral bodies; d) introducing a drill instrument into the sleeve and advancing the drill instrument within the sleeve to the disc space; e) forming with the drill instrument a bore that penetrates at least partially into each opposed vertebral body; f) removing the drill instrument from the sleeve; and g) introducing a fusion implant into the bore.
5	109. The method according to claim 108 further including the steps of:	6. The method according to claim 5 further including the steps of: